IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MS JUSTICE G.ROHINI
WRIT PETITION NO : 14413 of 2004

Between:

B. Madhusudhan Nair, S/o. Bhaskaran Nair,
R/o. 4-6-6/7, Attapur Road, Opp. Full Moon Petrol Pump,
Hyderabad.

..... PETITIONER

AND

1 Central Power Distribution Company, A.P. Ltd., rep. by its Asst. Divisional Engineer, Operation,
Miralam, Charminar Division, APCPDCL, South Circle, Hyderabad. A.P.
2 The Superintending Engineer, Assessment/M2/Himayatnagar, Hyd.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ, order or direction more particularly one in the nature of a Writ of Mandamus declaring the action of the first respondent in issuing the initial assessment notice (Pilferage) Lr.No.ADe/0/MIRALAM/City III/Sec:85/F.No.640/D.No.1732/03-04, Dt.23.3.2004 and threatening to disconnect the power supply without making any final assessment despite payment of about Rs.54,283/- on 24.3.2004 as arbitrary and consequently direct the respondents not to disconnect the power supply to S.C.No.S3 678/CAT-II at H.No.4-6-6/1/7, Attapur, Hyderabad.

Counsel for the Petitioner: MR.S.SATYAM REDDY

Counsel for the Respondents: Mr.K.Ravindra Kumar,

S.C. for APCPDCL

The Court made the following :

THE HONOURABLE MS.JUSTICE G.ROHINI

WRIT PETITION NO.14413 OF 2004

ORDER:

Heard the learned counsel for the petitioner and Sri Kankamandla Ravinder Kumar, learned standing counsel for the respondents

The petitioner seeks a writ of mandamus declaring the action of the first respondent in issuing the assessment notice dated 23.3.2004 as arbitrary and illegal.

The petitioner states that he is in occupation of a mulgi bearing house No.4-6-617, Attapur Ring Road, Hyderabad. The said mulgi was provided with power supply under service connection No.S3-678 under category-II. While so, the petitioner was served with impugned notice dated 23.3.2004 stating that on 20.3.2004 the premises was inspected by the AE/DPE/Hyd(S) and during the inspection certain irregularities were noted, which prima facie indicate that the petitioner is guilty of pilferage. It is further stated that an enquiry will be made into the matter by the Divisional Engineer (Assessment), Hyderabad, who will fix the amount of loss sustained by the Corporation and it is open to the petitioner to make representation. It is also stated that the value of the energy pilferaged has been provisionally estimated at Rs.2,05,484/- and if the petitioner is desirous of continuity of power supply pending

enquiry, he shall pay a sum ofRs.1,02,742/-. The said order is under challenge in this writ petition.

The learned counsel for the petitioner contends that the impugned notice issued by the respondents is arbitrary and illegal apart from being not inconformity with the provisions of the Indian Electricity Act, 2003, which came into force with effect from 10.12.2003. It is contended that the impugned action on the part of the respondents in demanding 50% of the provisionally estimated amount pending enquiry is not in consonance with the provisions of the Indian Electricity Act, 2003.

It is to be noted that a Division Bench of this Court in W.P.No.14520 of 2004 while considering the scope of the provisions of Indian Electricity Act, 2003 held that under the Act, there is no power while issuing provisional assessment to call upon the consumer to pay even part of the provisional assessment amount or to disconnect the power supply till the final assessment is made.

In the circumstances, following the ratio laid down by the Division Bench of this Court in the above case, I am of the view that the impugned notice cannot be sustained. Accordingly the impugned notice dated 23.3.2004 is hereby set aside leaving it open to the assessing authority to make finalasesment, in accordance with law, after affording due opportunity to the petitioner to submit his explanation.

Accordingly, the writ petition is disposed of with a direction to the respondents not to disconnect the power supply to the service connection of the premises in question till the final assessment is made.

The writ petition is accordingly disposed of. No costs.

(G.ROHINI,J)

Date: 21.9.2004.
Mdaa.

Copy to:

1 Central Power Distribution Company, A.P. Ltd., rep. by its Asst. Divisional Engineer, Operation,
Miralam, Charminar Division, APCPDCL, South Circle, Hyderabad. A.P.
2 The Superintending Engineer, Assessment/M2/Himayatnagar, Hyd.
3. Two C.D.copies.